

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
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4 Anthony Dewayne Bailey,
5 Plaintiff
6 v.
7 Douglas Herndon, et al.,
8 Defendants

Case No.: 2:16-cv-02595-JAD-CWH

**Order Overruling Objections, Adopting
Report and Recommendation, and Closing
Case**

[ECF Nos. 9, 11]

9 Pro se prisoner Anthony Dewayne Bailey brings a “citizen’s criminal complaint” against
10 various judges, court clerks, and attorneys who were involved in a state criminal case against
11 him. Magistrate Judge Hoffman granted Bailey’s *in forma pauperis* application, construed his
12 complaint as a civil action, and issued a report recommending that I dismiss his case with
13 prejudice because it is frivolous and cannot be cured by amendment. Bailey objects.

14 Having reviewed the objected-to portions of Judge Hoffman’s findings and conclusions
15 *de novo*, I overrule Bailey’s objections, adopt Judge Hoffman’s report and recommendation, and
16 dismiss this case.

17 **Background**

18 Bailey filed what he titled a “citizen’s criminal complaint pursuant to title 18 U.S.C. § 4,”
19 alleging violations “of due process. . . required constitutional oaths . . . and civil rights.”¹ The
20 bulk of Bailey’s complaint appears to revolve around his state criminal conviction in 2014. He
21 alleges that the judges presiding over his case, the district attorney prosecuting it, his defense
22 attorney, and the court clerk concealed information, promoted false statements, and took other
23 acts that rendered his conviction and related sentence “illegal.”² Bailey’s complaint asks me to
24 find the defendants liable under 18 U.S.C. §§ 241 and 242, which are criminal statutes penalizing
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27 ¹ ECF No. 10 at 1.

28 ² *Id.* at 7.

1 the violation of constitutional rights and conspiracy to violate those rights.³ He also seeks
2 \$7,200,000 from the defendants, to be paid in “0.999 Fine Silver.”⁴

3 Judge Hoffman recommends that I dismiss Bailey’s case because it lacks an arguable
4 basis in fact or law. He notes that the factual allegations supporting Bailey’s claims are
5 incomprehensible, and that Bailey “cites no authority to allow him to bring a felony criminal
6 complaint, or to act on behalf of the United States.”⁵

7 Bailey objects to Judge Hoffman’s recommendation. He contends that the magistrate
8 judge impermissibly construed his complaint as one brought under civil law, not criminal law.
9 He argues that the Prison Litigation Reform Act’s (PLRA) screening requirements do not apply
10 to “a complaining citizen seeking the arrest of public officials,”⁶ so Judge Hoffman shouldn’t
11 have screened the complaint at all. He also appears to believe that he filed his complaint under
12 Federal Rules of Criminal Procedure 3 and 4, so arrest warrants should be issued for the
13 defendants. Bailey further contends that his “criminal complaint” cannot be construed as
14 frivolous “unless commercial bribery exist[s].”⁷ Along with his objections, Bailey also filed a
15 “notice and demand,” listing more criminal statutes that he contends the defendants violated.⁸

16 Discussion

17 A district court reviews objections to a magistrate judge’s proposed findings and
18 recommendations de novo.⁹ “The district judge may accept, reject, or modify the
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21 ³ *Id.* at 10–11.

22 ⁴ *Id.* at 13.

23 ⁵ ECF No. 9 at 3.

24 ⁶ ECF No. 11 at 2.

25 ⁷ *Id.* at 3.

26 ⁸ ECF No. 12 (labeled as “notice and demand pursuant to 18 U.S.C. §§ 645 & 654, misprison
27 (sic) 18 U.S.C. §§ 3, 4, 241, 242, 1001, 1962(c), 1612, 1622”).

28 ⁹ *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121–22 (9th Cir. 2003).

1 recommendation, receive further evidence, or resubmit the matter to the magistrate judge with
2 instructions.”¹⁰

3 Bailey’s objections do not warrant reconsideration or modification of Judge Hoffman’s
4 order. Only United States attorneys can initiate criminal proceedings in federal court,¹¹ so
5 insofar as Bailey’s complaint can be construed as a criminal one, it lacks any basis in law or fact
6 because Bailey is not a U.S. attorney. And Bailey lacks standing to bring civil claims based on
7 criminal statutes,¹² so he cannot pursue any of his claims based on statutes from title 18 of the
8 U.S. Code. Because these criminal avenues are not available to Bailey, and because Bailey
9 alleged in his complaint that the defendants violated his constitutional rights, Judge Hoffman did
10 not err in construing the complaint as one brought under civil law. So, Bailey’s contention that
11 the PLRA’s screening requirements don’t apply to this case is unavailing, because he cannot
12 bring a criminal complaint seeking the arrest of public officials, and his complaint is better
13 construed as one alleging a civil action.

14 Bailey’s argument that his case cannot be construed as frivolous unless “commercial
15 bribery exists” is itself frivolous because that argument has no basis in law or fact. As Judge
16 Hoffman correctly stated, “[a] finding of frivolousness is warranted where the facts alleged are
17 ‘clearly baseless.’”¹³ A judge need not make a finding of “commercial bribery” to determine
18 that a case states no plausible claims for relief.

19 Further, Bailey’s complaint appears to challenge conduct taken during his criminal
20 proceedings that he contends was impermissible and led to his wrongful conviction and
21 imprisonment. To the extent that Bailey wishes to use a civil action to challenge the lawfulness

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23 ¹⁰ *Id.*

24 ¹¹ *Rhodes v. Robinson*, 399 F. App’x 160, 165 (9th Cir. 2010) (unpublished) (citing *Keenan v. McGrath*, 328 F.2d 610, 611 (1st Cir. 1964) (per curiam)).

25 ¹² See *Linda R.S. v. Linda D.*, 410 U.S. 614, 619 (1973) (“[I]n American jurisprudence . . . a
26 private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of
27 another.”); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (finding that criminal
provisions provide no basis for civil liability).


28 ¹³ ECF No. 9 at 2 (citing *Denton v. Hernandez*, 504 U.S. 25, 32 (1992)).

1 of his conviction and sentence, that course of action is barred by the United States Supreme
2 Court's decision in *Heck v. Humphrey*.¹⁴ I agree with Judge Hoffman's recommendation to
3 dismiss this case with prejudice because it is frivolous, and the defects discussed above cannot be
4 cured by giving Bailey an opportunity to amend.

5 **Conclusion**

6 Accordingly, IT IS HEREBY ORDERED that Bailey's objections [ECF No. 11] are
7 OVERRULED, Judge Hoffman's report and recommendation [ECF No. 9] is **ACCEPTED**
8 **AND ADOPTED**, and this lawsuit is **DISMISSED with prejudice**. The Clerk of Court is
9 directed to **CLOSE THIS CASE**.

10 Dated: May 9, 2018

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12 U.S. District Judge Jennifer A. Dorsey
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28 ¹⁴ See *Heck v. Humphrey*, 512 U.S. 477, 487 (1994).